

\$~43-45

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 1127/2017
ITA1128/2017, CM APPL.44860/2017
ITA1129/2017, CM APPL.44861/2017

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) - 1

..... Appellant

Through: Mr. Rahul Chaudhary, Sr. Standing
Counsel with Mr. Sanjay Kumar, Jr. Standing
Counsel.

versus

M/S AMRAPALI GRAND

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

11.12.2017

%

In these appeals by the Revenue for assessment years 2008-09, 2010-11 and 2011-12, the questions urged is “whether the ITAT fell into error in holding that the assessment claimed under Section 153 was invalid.”

It is noticed that this precise question was urged in ITA 323/2016 - which concerned the same search block assessments. The Court had then declined to entertain the appeal stating as follows: -

“3. The question that is sought to be urged is whether the ITAT erred in holding that the assessment framed by

the Assessing Officer ('AO') under Section 143(3) read with Section 153C of the Income Tax Act, 1961 ('Act') was invalid?

4. *A search took place on 9th September, 2010 in the 'Amprapali group' of cases. Subsequently, a notice dated 12th April, 2012 under Section 153C of the Act was issued to the Assessee, which is a partnership firm. In the ensuing assessment proceedings, the AO made an addition of Rs.1,12,60,413/- on account of bogus purchases of raw materials and of Rs.1,71,85,440/- on account of notional interest on the interest free loan.*

5. *Before the Commissioner of Income Tax (Appeal) ['CIT(A)'], the question of validity of the assessment was also challenged by the Assessee apart from the merits of the additions. By the order dated 18th September, 2013, the CIT(A) rejected the challenge to the validity of the assessment. However, the additions on the bogus purchases of raw materials and the addition on account of interest were deleted.*

6. *An appeal was filed by the Revenue and a cross-objection by the Assessee before the ITAT. The cross objection by the Assessee was specific to the issue of two documents stated to have been recovered during the search which did not belong to the Assessee and, therefore, could not form the basis for initiating proceedings against the Assessee under Section 153 C of the Act. The ITAT was of the view that the said document i.e. a chart at pages 53 and 54 of Annexure A-1 did not belong to the Assessee. Following the decisions of this Court in **Pepsico India Holdings Pvt. Ltd. v. ACIT (2014) 50 Taxmann.com 299 (Del)** and **Pepsi Food Pvt. v. ACIT (2014) 52 Taxmann.com 220 (Del)**, the ITAT held that the initiation of proceedings against the Assessee under Section 153C of the Act was bad in law.*

7. *Mr. Rahul Chaudhary, learned Senior Standing*

counsel for the Revenue submitted that the two documents in question recovered in the search of the “Amrapali Group” should be taken to belong to the Assessee which is a part of the said Group. Mr. Arvind Kumar, learned counsel for the Assessee, on the other hand points out that even in the satisfaction note recorded by the AO, the said documents were stated to “pertain” to the Assessee and not belong to it. It is further pointed out by Mr. Arvind Kumar, and rightly, that the amendment to Section 153C which replaced the words “belong or belongs to” with the words “pertain or pertains to” was made only with effect from 1st June, 2015 whereas the search in the present case took place on 9th September 2010 and the notice under Section 153C was issued on 12th April, 2012.

8. Consequently, the ITAT cannot be said to have erred in holding the assessment to be unsustainable in law. No substantial question of law arises. The appeal is dismissed.”

The above reasoning applies squarely in these assessment years as well. No substantial question of law arises. The appeals are accordingly dismissed.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

DECEMBER 11, 2017

/vikas/